



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0343]

RIN 1625-AA11

Regulated Navigation Area -- New Haven Harbor, Quinnipiac River, Mill River, New Haven, CT; Pearl Harbor Memorial Bridge (Interstate 95) Construction

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard is proposing changes to the existing regulated navigation area in the navigable waters of New Haven Harbor, Quinnipiac River and Mill River. The current RNA pertains only to the operation of tugs and barges. The changes would allow periodic, temporary closure of the area which will be needed during construction of the new Pearl Harbor Memorial Bridge, and which could be needed at other times as well. This proposed revision would allow the Coast Guard to suspend all vessel traffic through the RNA during periods of temporary closure. This rule is necessary to provide for the safety of life in the regulated area.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0343 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil); or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223-8385. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0343), indicate the

specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0343) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they

reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number "USCG-2012-0343" in the "SEARCH" box and click "Search." Click and Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice

regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area, and to update some of the terminology used in describing the boundaries of the RNA.

#### C. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 165.150, the regulation that establishes the New Haven Harbor,

Quinnipiac River, and Mill River RNA. The proposed amendment would give the Captain of the Port Sector Long Island Sound (COTP) the authority to temporarily close the RNA to vessel traffic in any circumstance, whether currently planned or unforeseen, that the COTP determines creates an imminent hazard to waterway users in the RNA. Waterway closures would be made with as much advance notice as possible and, when a closure is planned, at least ten days in advance. During closures, mariners may request permission from the COTP to transit through the RNA.

The proposed rule was prompted by (but is not limited to) the navigation safety situation created by reconstruction of the Pearl Harbor Memorial Bridge (sometimes referred to as the I-95 Bridge, Quinnipiac Bridge, or "Q" Bridge). This bridge carries Interstate 95 (Connecticut Turnpike) over the Quinnipiac River in New Haven. The present bridge was built in the 1950s and designed with a 50 year life span. The bridge has surpassed its useable life span and the Connecticut Department of Transportation (CDOT) has contracted H. W. Lochner INC. (Lochner) to construct a replacement bridge. Lochner has begun bridge construction and is scheduled to complete the project in 2015.

The Coast Guard has discussed this project at length with CDOT and Lochner to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. Specifically, this includes the demolition of steel support beams. These large and extremely heavy steel support beams are suspended 60 feet above the water; to demolish them, they must be cut into small sections and lowered on to a barge below. This process will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver.

In an e-mail to the U.S. Coast Guard dated January 20, 2012, Lochner outlined three phases of operations that require in-channel work, two of which will require waterway closures. Lochner will notify the Coast Guard as far in advance as possible if additional closures are needed.

The first planned closure period will be two days



during the fall of 2012. The purpose of this closure is to remove the steel support beams of the existing Pearl Harbor Memorial Bridge northbound span. The two days will be weekdays and the closure will be in effect for the full 48 hours.

The second planned closure period will be two days during the fall of 2013. The purpose of this closure is to remove the steel support beams of the existing Pearl Harbor Memorial Bridge southbound span. The two days will be weekdays and the closure will be in effect for the full 48 hours.

In addition to the revisions discussed above, the Coast Guard is proposing several wording updates in the description of the RNA. The updates would reflect the current names of local landmarks to make them more easily identifiable for mariners, but do not change the location or dimensions of the RNA.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which will include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule

would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either

preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private

property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a

preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 165 as follows:

#### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1,



6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064;

Department of Homeland Security Delegation No. 0170.1.

2. In §165.150 revise paragraphs (a) and (b)(8), and add new paragraph (b)(9) to read as follows:

§ 165.150 New Haven Harbor, Quinnipiac River, Mill River.

(a) Boundaries. The following is a regulated navigation area: The waters surrounding the Tomlinson Bridge and Pearl Harbor Memorial Bridge (I-95 Bridge) located within a line extending from a point A at 41°17'50" N, 072°54'36" W (the southeast corner of the Magellan Pink Tanks Terminal dock) thence along a line 126°T to point B at 41°17'42" N, 072°54'21" W (the southwest corner of the Gulf facility) thence north along the shoreline to point C at 41°17'57" N, 072°54'06" W (the northwest corner of the R & H Terminal dock) thence along a line 303°T to point D at 41°18'05" N, 072°54'23" W (the west bank of the mouth of the Mill River) thence south along the shoreline to point of origin.

\* \* \* \* \*

(b) \* \* \*

(8) The Captain of the Port Sector Long Island Sound (COTP) may issue an authorization to deviate from any regulation in paragraph (b) of this section if the COTP determines that an alternate operation can be done safely.

(9) The COTP may temporarily close the RNA for any situation the COTP determines would create an imminent hazard to waterway users in the RNA. Entry into the RNA during temporary closure is prohibited unless authorized by the COTP or the COTP's designated representative. The COTP or designated representative may order the removal of any vessel or equipment within the RNA. To assure wide advance notice of each closure among affected mariners, the COTP will use means including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The COTP will announce the dates and times of the closure and whether exceptions will be authorized for emergency or other specific vessel traffic.

Dated: July 19, 2012

D. B. Abel  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

[FR Doc. 2012-19378 Filed 08/07/2012 at 8:45 am; Publication Date: 08/08/2012]